

MEETING SUMMARY

Remand Stakeholder Engagement (RSE) Process Meeting with Invited Stakeholders

November 16, 2012, 10:00am – 12:30p.m.
Bay-Delta Office, 4th Floor Conference Room
801 I Street, Sacramento, CA

Attendees: See sign-in sheet (attached)

Reclamation RSE Process Team

Name	Affiliation
Sue Fry	Manager, Reclamation Bay-Delta Office
Patti Idlof	Chief, Conservation and Conveyance Division, Reclamation Bay-Delta Office
Kristin White	Reclamation Planning Division
Janice Piñero	Reclamation Bay-Delta Office
Becky Victorine	Reclamation Bay-Delta Office
Ben Nelson	Reclamation Bay-Delta Office
Bill McDonald	Staff Tech, Inc.
Gwen Buchholz	CH2M Hill
J. Michael Harty	Kearns & West
Kelsey Rugani	Kearns & West

Meeting Summary:

This document summarizes the November 16, 2012, Remand Stakeholder Engagement (RSE) process meeting. It focuses on key agenda items and related Questions & Answers and next steps. The summary is not intended to be a transcript of the meeting.

*The meeting Agenda and other handouts are available online at:
www.usbr.gov/mp/BayDeltaOffice/Documents/remand.*

Agenda Item I: Welcome and Greetings

Sue Fry, Reclamation's Bay-Delta Office Manager, welcomed the Invited Stakeholders and other guests to this third Remand Stakeholder Engagement (RSE) process meeting. Sue introduced her staff and consultant team, and meeting participants introduced themselves. Mike Harty, the meeting facilitator, reviewed logistics for the meeting and agency representatives were advised to contact Sue in order to add staff to the security list for future sessions.

Agenda Item II: Updates

Remand and RSE Process Schedule: Sue briefly reviewed the court-ordered deadlines and Reclamation's schedule to meet those deadlines shared earlier with Invited Stakeholders at the October 16 RSE process meeting as Agenda Item II. The deadlines and schedule are available on the website. Cooperating agencies (and other Invited Stakeholders) likely will be reviewing an Administrative Draft EIS in January 2013—see below for details.

Stanislaus River Focus Group Meeting Update: The Stanislaus River Focus Group has met twice; two additional meetings are scheduled for November 29th and December 12th from 9am-12pm. Agendas and notices for these meetings have been sent to the Invited Stakeholders and meeting notes will be posted on Reclamation's website. The next topic of discussion is fish flow needs from March through May. Sue will be meeting with Stanislaus River representatives later today to discuss how to maximize the value of these discussions; meeting dates may be adjusted.

CCWD and OMR Criteria: Greg Gartrell advised that there was no substantive update on the OMR criteria topic covered at the last RSE process meeting. CCWD is meeting on this issue with agency representatives on November 29th, 2012.

Schedule Extension: Discussions regarding a schedule extension for the remand process are ongoing but no schedule extension has been agreed to and no request has been filed with the court. Reclamation will continue to strive to meet the current court-ordered deadlines until there is a change. Any change is unlikely to take effect until January 2013 at the earliest.

Agenda Item III: Response to Comments Received Following the October 19 RSE Process Meeting

Sue advised the Invited Stakeholders that she and the Reclamation team had reviewed all comments received following the October 19 meeting as well as those submitted earlier on the 2011 Project Description, and that she had made a number of decisions about Reclamation's ability to address those comments under the current schedule. Reclamation will address errata and updates in the 2011 Project Description that were identified in comments. In addition, as discussed at the last RSE process meeting, the OMR criteria appear to be an issue that can be addressed within the current schedule. Primarily due to a lack of time to do justice to the complexity of issues, Reclamation's Project Description for the consultation package will not address the following:

- Sacramento River at Wilkins Slough criteria
- American River in-basin operations
- Transfer assumptions (the "window") including comments from SFCWA

An extension of the court-ordered deadlines, if this occurs, may present an opportunity to address one or more of these issues.

One additional consequence of the compressed schedule is that the EIS will be qualitative in nature and will not include impact analyses based on numerical modeling tools. Gwen Buchholz

advised that modeling a single scenario can take up to 22 weeks to evaluate surface water, groundwater, water quality, agricultural economics, aquatic resources, recreation, and regional economic resources. The EIS will provide detailed descriptions of the affected environment for the physical and environmental resource areas that could be affected by implementation of alternatives. The EIS also will include qualitative and programmatic impact analyses of each alternative as compared to the No Action Alternative, at a minimum. Reclamation realistically can achieve this type of environmental analysis within the court-ordered schedule. The EIS is being prepared to evaluate actions and impacts that might be part of final Biological Opinions from NMFS and USFWS. The EIS is being formulated to allow for the Record of Decision to identify the final USFWS and NMFS Biological Opinion actions without the need for additional environmental documentation or additional analyses.

- Question: How will Reclamation be able to provide a sufficient level of analysis for all resources to satisfy the court's order?
 - Response: Reclamation's approach is to do the best analysis possible within the available time. A significant time extension would be useful by allowing for quantitative analyses. An extension that applies only to the USFWS Biological Opinion potentially would allow USFWS and NMFS to "synchronize" their schedules but would not allow enough time for a comprehensive modeling effort of numerous alternatives.

Agenda Item IV: NEPA Process Strategy and Updates

Sue advised the Invited Stakeholders that she intended to share with them some decisions about the NEPA process along with the rationales for those decisions. She previously met with the Regional Director and informed him about these decisions. While Sue is open to further discussions if any Invited Stakeholder has new information or believes Reclamation has made an error, she intends to proceed in accordance with her current decisions.

Purpose and Need: Reclamation will use the Purpose and Need from the Notice of Intent as the starting point, and will continue to revise the Purpose and Need statement with the input of the Invited Stakeholders throughout the preparation of Draft EIS.

- Question: How will Reclamation solicit input on the Purpose and Need statement?
 - Response: Reclamation plans to have an Administrative Draft EIS available for review at some point in January. Cooperating agencies will be asked to comment on the document, particularly on the areas where they have expertise. A RSE process meeting is expected to be scheduled with the Invited Stakeholders to go over the comments on the Administrative Draft EIS, including the Purpose and Need statement.

No Action Alternative: The comments reflect a clear difference in views about whether the No Action Alternative should be the 2011 Project Description with the Reasonable and Prudent Alternatives (RPAs) from the USFWS and NMFS Biological Opinions (as modified to reflect recent facilities changes and errata) or the modified 2011 Project Description without the RPAs. Reclamation has decided that the No Action Alternative should include the modified 2011

Project Description with the RPAs because current operation of the CVP and SWP includes initiation of the implementation of the RPAs—and that operation will continue for the foreseeable future. Therefore, use of the “modified 2011 Project Description without the RPAs” would not represent continued policy or management, and could not be considered under the definition of the No Action Alternative. However, in response to comments, Reclamation is open to treating Alternative 1—the 2011 Project Description without the RPAs—as a basis of comparison. Under this approach the No Action Alternative would be compared to this basis of comparison, and each alternative would be compared to the No Action Alternative as well as this basis of comparison.

This approach to the No Action Alternative generated an extended discussion that included other approaches and their possible implications. The key points are summarized below, followed by questions.

- CEQA and NEPA have some significant differences in this area and it is important to focus on what NEPA requires or allows.
- The range of alternatives could include “bookends” that are intended to encompass the two revised Biological Opinions from USFWS and NMFS.
- As proposed, the basis of comparison would not be a No Action Alternative or an alternative. It would not meet the Purpose and Need and therefore could not be selected as the preferred alternative.
- Reclamation could ultimately select the No Action Alternative as its preferred alternative.
- Reclamation intends to select a preferred alternative that will be consistent with the Endangered Species Act and avoid jeopardy to federally-listed species and avoid adverse modification or destruction of their critical habitat.
- Reclamation is open to considering the possibility of the modified 2011 Project Description without RPAs being considered as a basis of comparison for the alternatives impact analyses in response to comments from some Invited Stakeholders.
- Reclamation will arrange for a RSE process conference call on November 30 at 1:00 pm to provide further opportunity to discuss the No Action Alternative in the EIS.
- Invited Stakeholders who wish to provide additional comments should do so as soon as possible in writing to ensure accuracy. These will be posted on the Reclamation website consistent with the RSE approach.

- Question: Is Reclamation’s decision about the No Action Alternative a legal decision or a policy decision?
 - Response: This is our decision based on our interpretation of the court’s requirements, CEQ regulations, and the Department of the Interior NEPA Regulations and guidance.
- Question: Since this will be a qualitative analysis, how will a qualitative baseline be used in the determination of “significant adverse impacts,” and will only adverse impacts be reported in the EIS?

- NEPA does not include thresholds of significance; this is a CEQA concept. However, under NEPA, the impact assessment will include both adverse and beneficial impacts in the impact analysis.

Timing of BA and EIS: There were comments about Reclamation's intent to prepare the EIS first and use it to inform the Biological Assessment (BA). Reclamation does not agree that the BA must be prepared before the EIS. Doing the NEPA analysis first supports Reclamation's approach of developing a consultation package that avoids jeopardy. The NEPA document will include an assessment of the biological impacts.

Screening Criteria and Range of Alternatives: Gwen Buchholz explained the approach to screening criteria. The initial screening criterion is consistency with the purpose statement included in the Notice of Intent. Secondary screening criteria may include criteria developed to ensure alternatives are practical and technically and economically feasible. However, use of secondary screening criteria would be contingent upon the level of detail available to describe the alternatives.

All or most alternatives can be carried through the detailed impacts analysis in the EIS under NEPA and don't necessarily have to be screened out. The current set of alternatives represents all but one of the recommended alternatives identified through the scoping process. The elimination of CVP facilities and CVP facility operations is the only alternative identified in the scoping process that would be considered to not initially meet the purpose statement. As a result, this is the only recommended alternative that will not be considered in detailed analysis in the EIS. Generally all other alternatives identified during scoping will be addressed in one or more of the alternatives to be considered in detail in the EIS.

Reclamation is open to revisiting the array of alternatives in the event of a schedule extension.

- Question: Since this will be a qualitative analysis, how quantitative will the alternative descriptions be?
 - The alternatives will be more general in nature without detailed description.

RSE Process Impact: Sue emphasized that from Reclamation's perspective the Invited Stakeholders were having an impact on the remand process through their review of information, preparation of comments, and participation in RSE process meetings. The anticipated corrections to the 2011 Project Description are one set of examples; the proposed OMR criteria are another example, and the treatment of NEPA alternatives is a third.

Agenda Item V: Next RSE Process Steps

Cooperating Agency MOU: Patti Idlof reviewed the status of cooperating agencies. Five federal agencies have been invited to participate as cooperating agencies for the EIS: EPA, Corps of Engineers, BIA, NMFS, and USFWS. In August, Reclamation sent 748 invitations to a wide range of state and local agencies inviting their participation as cooperating agencies. Fifteen affirmative responses have been received: CCWD, OID, RD108, SEWD, Sutter Mutual, TCCA, SJWD, SLDMWA, Zone 7, San Diego County Water Authority, CA Valley Miwok Tribe, City of

Hesperia, Humboldt County Board of Supervisors, Del Puerto Water District, and Friant Water Authority. On November 15th, Reclamation mailed MOUs to each of these entities. The MOUs define roles and responsibilities of Reclamation and the cooperating agencies. As noted earlier, cooperating agencies will be reviewers of the Administrative Draft EIS. It is not too late to request cooperating agency status; submit a request in writing to Reclamation.

Review of Administrative Draft: Cooperating agencies will have two weeks to review the Administrative Draft EIS and provide written comments to Reclamation. Other Invited Stakeholders will also be provided a review opportunity and should be prepared to provide their comments as part of the next RSE process meeting. Reclamation will not be responding in writing to comments on the Administrative Draft EIS.

Schedule of Future Meetings: The next RSE process meeting will likely be in February based on the schedule presented today but the process is evolving.

Action Items and Next Steps

- The next RSE process Invited Stakeholder meeting likely will be sometime in February at the same location. Reclamation will notify stakeholders as the schedule becomes clearer.
- Potential cooperating agencies should submit written requests to Reclamation. Reclamation will post the cooperating agency MOU on the website.
- Reclamation will set a conference call for November 30th at 1:00 pm to further discuss the approach to NEPA alternatives. All previous and any additional comments submitted in writing will be posted on the website.
- Reclamation will change the March 2012 date on the schedule to March 2013.
- Reclamation will make sure California Department of Fish and Wildlife has been invited to future Stanislaus River meetings.
- Sue will follow up with Cindy/Curtis about the transfer window. A separate North/South Transfer environmental review process may be addressing this topic.